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FILED
 COURT OF CRIMINAL APPEALS
 12/6/2018
 DEANA WILLIAMSON, CLERK

December 6, 2018

Via Efiling

To the Honorable Justices of the Court of Criminal Appeals
 Texas Court of Criminal Appeals
 P.O. Box 12308
 Austin, TX 78711

**Re: *Post-filing letter in the matter of Jesse Galino Delafuente*,
 PD-0710-18, 10-16-00376-CR, 2016-419- C1**

To the Honorable Justices of said court,

This purpose of this letter is to address a relevant decision of this Court, *Smith v. State*, PD-0514-17, that was issued after the Petition for Discretionary Review in this matter was filed. This Court may wish to summarily grant the petition in this matter and instruct the Court of Appeals to reconsider its decision in light of this Court's reasoning in *Smith*.

In *Smith v. State*, this Court stated:

...a grant of shock probation is an order that suspends the execution of a previously-pronounced sentence by placing the defendant on community supervision. It is appealable by either party. Even though the order in this case was labeled as a new judgment, it was nevertheless a court order granting shock probation.

Smith v. State, No. PD-0514-17, 2018 Tex. Crim. App. LEXIS 920, at *9
 (Crim. App. Sep. 26, 2018)

The opinion of the Court of Appeals in the instant case focused on the fact that the court believed the order granting shock probation in this case was a “judgment” and found that the court did not have jurisdiction because a notice of appeal was not timely filed after that “judgment.” But in our case, Appellant had no desire to appeal his granting of shock probation. He has only ever wanted to appeal matters from his original trial. Appellant did timely file a notice of appeal in order to appeal his initial finding of guilt and thus the court of appeals had jurisdiction to consider matters raised by that notice of appeal. The court of appeals could separately conclude that it had no jurisdiction to address the granting of shock probation because Appellant did not timely file notice of appeal of that separate appealable order.

Because this Court has now undercut a key part of the court of appeals’ reasoning, we ask this Court to either find it has jurisdiction and consider the underlying merits of Appellant’s arguments to the court of appeals, or summarily grant the petition and remand to the court of appeals with instructions to reconsider in light of this Court’s ruling in *Smith*.

Thank you for your consideration.

Sincerely,

____/s/____Robert G. Callahan, II_
Robert G. Callahan, II
Attorney for Appellant

CC: McLennan County District Attorney
State Prosecuting Attorney